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IN THE

Supreme Court of the United States

OCTOBER TERM, 1976

No. 76-922

D. ALWYN STIVERS and WALTER B. CHERRY,
Appellants,

v.

STATE OF MINNESOTA; MINNESOTA STATE BAR ASSOCIATION; HENNEPIN COUNTY DISTRICT COURT; JUDGE STANLEY D. KANE; GARY FLAKNE, Hennepin County Attorney; WARREN SPANNAUS, Minnesota Attorney General,
Appellees,

MOTION TO DISMISS AND BRIEF

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Appellees.

MOTION TO DISMISS

Appellees respectfully move this Court, pursuant to Supreme Court Rule 16 (1) (a) to dismiss this appeal on the ground that it is not within the jurisdiction of this Court.

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Appellees,

BRIEF IN SUPPORT OF MOTION TO DISMISS

Appellees State of Minnesota and Attorney General Spannaus respectfully submit this brief in support of their motion to dismiss.[1]

[1] We are authorized to inform the Court that the remaining appellees in this action concur with and join in the argument set forth in this brief and for that reason shall not submit a separate Motion to Dismiss to the Court.

CITATION TO OPINION BELOW

The opinion of the three-judge district court below has been officially reported as *Thibodeau v. State of Minnesota*, 419 F.Supp. 87 (D. Minn. 1976).

JURISDICTION

Appellees submit this appeal is not within the jurisdiction of this Court since the provisions of 28 U.S.C. § 1253 do not authorize a direct appeal to this Court from the decision of the three-judge district court below.

STATEMENT OF THE CASE

The background of this action is accurately set forth in the opinion of the three-judge district court below. *Thibodeau v. State of Minnesota*, 419 F.Supp. 87, 89 (D. Minn. 1976).

Briefly, appellants and others commenced this action in October, 1975. They sought declaratory and injunctive relief based upon the alleged unconstitutionality of the Minnesota unauthorized practice of law statute, Minn. Stat. § 481.02 (1974), and an order enjoining then-pending state court civil proceedings commenced by the Minnesota State Bar Association against two of the original plaintiffs herein and a "divorce reform" organization.

A three-judge district court was convened and plaintiffs' motion to enjoin the state court proceedings was denied. Thereafter, the court below, upon motion of the defendants, dismissed plaintiffs' action on the grounds of federalism, comity and equity expressed most recently by this Court in *Huffman v. Pursue, Ltd.*, 420 U.S. 592 (1975). *Thibodeau v. State of Minnesota, supra*, 419 F.Supp. at 90 (D. Minn. 1976).

ARGUMENT

THE PRESENT APPEAL IS NOT WITHIN THE JURISDICTION OF THIS COURT

The provisions of 28 U.S.C. § 1253 [2] do not authorize a direct appeal to this Court from the decision of the three-judge court below. This appeal is therefore without the jurisdiction of this Court and should be dismissed.

The three-judge court below properly concluded that principles of equity, comity and federalism mandated dismissal of appellants' action since the relief they sought would effectively annul the results of a state court action. In reaching its decision, the court in a careful and correct manner applied the principles enunciated by this Court in *Huffman v. Pursue, Ltd.*, 420 U.S. 592 (1975); *Younger v. Harris*, 401 U.S. 66 (1971); and *Samuels v. MacKell*, 401 U.S. 66 (1971). Thus, the three-judge court below did not reach the merits of appellants' constitutional claims. It is well-established that in such circumstances a direct appeal to this Court is not authorized by 28 U.S.C. § 1253. *MTM, Inc. v. Baxley*, 420 U.S. 799, 804 (1975). *Cf. Gonzalez v. Automatic Employees Credit Union*, 419 U.S. 90 (1974); *Valentino v. Howlett*, 528 F.2d 975 (7th Cir. 1976).

The decision in *MTM, Inc. v. Baxley, supra*, is controlling here and dictates dismissal of this appeal. That decision was issued more than one year before the filing of this appeal and the rationale upon which it is based was discerned from other

[2] That statute provides:

> Except as otherwise provided by law, any party may appeal to the Supreme Court from an order granting or denying, after notice and hearing, an interlocutory or permanent injunction in any civil action, suit or proceeding required by any Act of Congress to be heard and determined by a district court of three judges.

decisions of this Court by commentators on § 1253 even prior to that time. *See, e.g.*, 9 *Moore's Federal Practice*, ¶ 110.03[3] at 79 (1975). We respectfully submit these factors and the obvious propriety of the decision below indicate that this case is not an appropriate one for entry of an order vacating the judgment below in order to permit review in the court of appeals.

CONCLUSION

For the foregoing reasons, the Court should dismiss this appeal for want of jurisdiction.

Respectfully submitted,

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